

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN

LINDA LARSON,
Plaintiff,

-vs.-

DEMAND FOR JURY TRIAL

FMS, INC.
d/b/a FINANCIAL MANAGEMENT SERVICES, INC.
an Oklahoma corporation,
Defendant.

COMPLAINT & JURY DEMAND

Plaintiff, Linda Larson, through counsel, Nitzkin and Associates, by Gary Nitzkin states the following claims for relief:

JURISDICTION

1. This court has jurisdiction under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692k(d) and 28 U.S.C. §§1331,1337.
2. This court may exercise supplemental jurisdiction over the related state law claims arising out of the same nucleus of operative facts which give rise to the Federal law claims.

PARTIES

3. The Defendant to this lawsuit is FMS, Inc. which is an Oklahoma corporation which has registered offices in Oakland County, Michigan.

VENUE

4. The transactions and occurrences which give rise to this action occurred in Macomb County.
5. Venue is proper in the Eastern District of Michigan.

GENERAL ALLEGATIONS

6. Defendant is attempting to collect an alleged debt owed to Citibank in the amount of \$19,352.47.
7. Starting in May of 2011, the Defendant has been calling Plaintiff on her home and cell phone.
8. Ever since May 2011 and in almost every conversation with Plaintiff, Defendant has said to Plaintiff, "We can sue you. Once you are sued, we can garnish your wages and go after your cars and bank accounts."
9. In the beginning of June 2011, Plaintiff told Defendant that she is in a financial hardship and cannot pay this alleged debt. Defendant threatened Plaintiff by stating, "We can take your car and sell it at auction."
10. To date, Defendant has not sued Plaintiff, as this debt is most likely beyond the Statute of Limitations.
11. Defendant has left numerous messages for the Plaintiff in which it has failed to identify itself as a debt collector.
12. The Plaintiff has suffered damages as a result of these violations of the FDCPA.

COUNT I - FAIR DEBT COLLECTION PRACTICES ACT

13. Plaintiff reincorporates the preceding allegations by reference.
14. At all relevant times Defendant, in the ordinary course of its business, regularly engaged in the practice of collecting debts on behalf of other individuals or entities.
15. Plaintiff is a "consumer" for purposes of the FDCPA and the account at issue in this case is a consumer debt.
16. Defendant is a "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6).
17. Defendant's foregoing acts in attempting to collect this alleged debt violated 15 U.S.C. §1692 et. seq;
18. The Plaintiff has suffered damages as a result of these violations of the FDCPA.

COUNT II - VIOLATION OF THE MICHIGAN OCCUPATIONAL CODE

19. Plaintiff incorporates the preceding allegations by reference.
20. Defendant is a "collection agency" as that term is defined in the Michigan Occupational Code ("MOC"), M.C.L. § 339.901(b).
21. Plaintiff is a debtor as that term is defined in M.C.L. § 339.901(f).
22. Defendant's foregoing acts in attempting to collect this alleged debt violated MCL §339.915
23. Plaintiff has suffered damages as a result of these violations of the Michigan Occupational Code.
24. These violations of the Michigan Occupational Code were willful.

COUNT III - VIOLATION OF THE MICHIGAN COLLECTION PRACTICES ACT

25. Plaintiff incorporates the preceding allegations by reference.
26. Defendant is a "Regulated Person" as that term is defined in the Michigan Collection Practices Act ("MCPA"), at MCL § 445.251.
27. Plaintiff is a "Consumer" as that term is defined at MCL § 445.251.
28. Defendant's foregoing acts in attempting to collect this alleged debt violated MCL §445.252
29. Plaintiff has suffered damages as a result of these violations of the MCPA.
30. These violations of the MCPA were willful.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury in this action.

DEMAND FOR JUDGMENT FOR RELIEF

Accordingly, Plaintiff requests that the Court grant him the following relief against the defendant:

- a. Actual damages.
- b. Statutory damages.
- c. Treble damages.
- d. Statutory costs and attorney fees.

Respectfully submitted.

July 7, 2011

/s/ Gary Nitzkin
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